

# **CDCR Valdivia Monitoring Report**

## **Los Angeles County Jail**

### **2009-1st Quarter**



# **CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**



## **VALDIVIA MONITORING TOUR Los Angeles County Jail**



**Final Report to Task Force**

**Submitted by the**

**OFFICE OF COURT COMPLIANCE**

**April 24, 2009**

# VALDIVIA/ARMSTRONG TOUR REPORT

Los Angeles County Jail

1<sup>st</sup> Quarter 2009

March 10-11, 2009

## 1. SUMMARY OF TOUR

### A) Purpose of the Tour

The Office of Court Compliance (OCC) observed parole revocation proceedings at the Los Angeles County Jail (LACJ), and met with California Department of Corrections and Rehabilitation (CDCR) and California Parolee Advocacy Program (CalPAP) staff. The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedure pertaining to parole revocation.

### B) Administration of the Tour

The monitoring group observed the following processes:

#### Revocation:

- 21 Notice of Rights/Charges.
- 7 Probable Cause Hearings.
- 3 Revocation Hearings.

The monitoring group also reviewed the following documents/revocation packets prior to the tour:

- 150 revocation packets, **See Exhibits 1-A and 1-B**

### C) Proposed Corrective Action Plan:

The Office of Court Compliance has identified items in need of corrective action(s) for any deficiency associated with the *Valdivia* procedures/process throughout this report. The Office of Court Compliance will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies identified in this report. However, the Office of Court Compliance is always available to provide input and suggestions to the affected divisions in order to develop efficient corrective action and any necessary policy changes. Each division should utilize this report to generate a corrective action plan to remedy the problems identified herein. The divisions should also document their proposed/implemented corrective action and return to the Office of Court Compliance within 30 days.

## 2. Probable Cause Determination

### *Timeliness*

Fifteen of the 150 revocation packets reviewed prior to the tour did not contain the CDCR 1502-B, and one case did not have the date or signature of the Unit Supervisor (US); therefore timeliness could not be assessed. (**Exhibit 1-B**). A timely PCD was completed in all 134 reviewable cases (100%). (**Exhibit 1-A**). The RSTS "Closed Case Summary – Valdivia Timeliness Rules" report reveals 99% of PCDs for cases processed at LACJ were timely for the

month of February 2009. **(Exhibit 2)**. PCDs for the Compton 1 and 2 parole units were timely in 95% and 100% of cases for the month, respectively. **(Exhibit 2)**.

A review of the revocation documents reveals that 52/135 (39%) 1502-Bs reviewed prior to the tour failed to meet the requirement to provide a short factual summary of the charged conduct for each alleged charge for purposes of serving the parolee notice. This problem remains even after DAPO provided statewide training to all parole agents in the second half of 2008. DAPO's training provided instruction on the minimum standards for the factual summaries and clear direction to agents regarding factual summaries. Most of the inadequate factual summaries surround absconding charges where the agent simply noted that the parolee was arrested for a PAL warrant or that the BPH had acted to suspend parole. Although this serves as a basis for a probable cause determination, the 1502-B is also used to serve the parolee notice of the charges and the agent must provide the facts that led to the PAL status in order to provide factual context regarding the behavior that gave rise to the allegation that the parolee absconded. The US(s) should not approve 1502-Bs that do not conform to the instruction provided by DAPO Headquarters. **(Exhibits 1-B and 3)**. *See Section III below for more discussion regarding the factual content required on the 1502-B.*

In 14 cases of 135 (10%), the CDCR 1502-B Probable Cause box was not marked. **(Exhibits 1-B and 3)**. The PC box is part of the Unit Supervisor decision and documents that probable cause has been found to maintain the parole hold.

The monitors also noted that several 1502-Bs were handwritten and difficult to read, and there was at least one that utilized a fill-in-the-blank format.

#### ❖ **CORRECTIVE ACTION PROPOSED**

- **Paragraph 11 of the *Valdivia* Permanent Injunction requires that the parolee be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct. The OCC recommends that DAPO review any current policies and procedures that address what information must be included in the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met. It also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary. Lastly, Unit Supervisors must not approve 1052-B that lack a factual summary of the charged conduct where the information is clearly known by DAPO.**
- **Unit Supervisors must be instructed to check the Probable Cause box on the CDCR 1502-B as verification that probable cause was found to maintain the parole hold.**

### 3. Notice of Rights/Charges

#### *Timeliness*

111/131 (85%) notices analyzed prior to the tour were timely (some packets were missing the BPH 1073 or BPH 1100 so timeliness could not be determined from the document review). **(Exhibit 1-A)**. The late cases averaged 1.4 days late. *Id.* Of the twenty late cases, fourteen were one day late, five were two days late, while the remaining case was four days late. Additionally, 21 notices were observed during the tour and all were timely. Therefore, 132/152 total notices were timely (87%).

CalPAP's Notice of Rights compliance monthly reports reflect that the timeliness of notices completed at LACJ have not fluctuated much. 87.31% were timely in October 2008, 86.04% were timely in November 2008, and 87.34% were timely in December 2008. **(Exhibit 1-D)**.

#### *Supervising Notice Agent interview*

The Supervising Notice Agent (SNA) indicated LACJ is unique in that they utilize two SNAs that share in the supervisory duties over 28 notice agents. The SNAs review RSTS cases at the notice step on a frequent basis to identify errors in the process and conduct training as needed when an issue is spotted. She added that monthly meetings with notice agents provide an opportunity to review newly published informational memos, directives and Valdivia Alerts. These training sessions not only verify field agents' receipt of newly published materials, but also ensure that they understand and apply the directives. The SNA added that training sessions also provide the notice agents an opportunity to ask questions and share information with other notice agents. The SNAs also use the monthly staff meetings, along with periodic visits to parole units, to ensure notice agents have their ADA equipment bag and that the equipment is operational.

The SNA also indicated she appreciated the recent focused efforts to remedy the compliance issues identified in the Los Angeles area. This attention has brought about new energy amongst staff to share their own experiences and problems in the field, while also facilitating discussions on ways to improve the notice process at LACJ.

One problem the SNA identified was the notice agents' lack of inmate access to conduct notices throughout the day at LACJ (historically being limited to the hours of 0700 to 0930). In order to remedy this problem, DAPO Headquarters met with jail staff on April 6, 2009 and the parties agreed that parolees would be escorted for notices at various times throughout the day and that notice agents will continue to have access to various housing units and accessible locations within the jail to continue to serve notices beyond the morning hours.

One improvement in training for DAPO staff is already under way in Los Angeles. The Region III Par Ads have conducted mandatory parole revocation training for Administrators, Unit Supervisors, and Assistant Unit Supervisors. The training occurred March 11<sup>th</sup> - 25<sup>th</sup> and included the following components: factual summaries on the CDCR 1502-B, conducting complete field file reviews; Proposition 36 criteria and requirements, use of the CDCR 1521B, inclusion of notice documents in the revocation packets, DEC and missing source documents, incomplete revocation packets, submission of incomplete and outdated CDC 1244 Parole

Violation Disposition form, Olsonization of violation reports; and over-detention. DAPO Headquarters has also determined that training must be on-going and as such, the Par Ads will continue training sessions with parole units on a regular basis. In addition, all notice agents and SNAs were provided remedial training on March 4, 2009 regarding the notice process, disabilities/accommodations, and the use of DEC.

***Preparation and method of notice***

The OCC monitors interviewed one FUNA at the Compton parole complex. Although she is new to the FUNA position she had many years experience as a parole agent and had a clear understanding of the revocation timelines and the need to identify and provide accommodations in the revocation process per departmental policy and procedures.

The FUNA indicated that every morning she reviews RSTS and her in-box (specifically designated for new parolee arrests) for any notices that need to be completed. She then reviews the field file and RSTS/DEC for ADA information to complete Section I of the BPH 1073 and prepare for the notice. The FUNA added that she makes a concerted effort during every notice to establish effective communication before reviewing any substantive information with the parolee, and if needed, will read the notice documents verbatim. The FUNA added that since her arrival at the Compton parole complex, conducting timely notices has been a top priority.

The OCC monitors noted that the December 2008 plaintiffs' report indicated that one DRUNA based out of Region III Headquarters was responsible for three parole offices: Compton, Los Angeles and Antelope Valley (per Google maps, the distance from Compton to Antelope Valley alone is approximately 94 miles each way). The large geographical area covered by this notice agent undoubtedly adversely impacted their ability to visit each office daily, conduct the necessary field file review/case preparation and still complete timely notices. In January 2009 the Compton parole complex hired a full time FUNA, which has contributed to a significant increase in timely notices processed from the unit. A review of the RSTS Closed Case Summary *Valdivia* Timeliness at the notice step for Compton 1 & 2 show an impressive improvement in timeliness since the staffing addition was made:

- Compton # 1: 65% timely notices in January 2009, 83% timely notices in February 2009 - an 18% improvement.
- Compton # 2: 65% timely notices in January 2009, 85% timely notices in February 2009 - a 20% improvement.

The OCC monitors were able to observe several notice agents at LACJ in the location where a majority of notices are conducted and in an IRC housing unit. The notice agents observed in the notice line were consistent, ensuring positive identification of the parolee and establishing effective communication prior to delving into the substantive aspects of the notice. For example, parolee Buckman (F84406) cannot read so the notice agent read all documents verbatim to the parolee. Several parolees also reported vision problems and were provided a magnifier sheet before the documents were reviewed. The notice agents received training in March 2009, which seems to have improved their practices with respect to the notice process. One notice agent began a notice by reviewing the CDCR 1502-B prior to the BPH 1073, but the DAPO representative quickly reminded him that he must conduct an ADA review and complete the

BPH 1073 prior to reviewing the charges. The notice agent acknowledged the proper procedure and adhered to it for all remaining notices.

One DRUNA conducting notices in the IRC housing unit did not give the parolees an opportunity to self-identify accommodations needed and merely asked for the parolee's signature in Section II of the BPH 1073. The DAPO representative observed this and brought it to the attention of the SNA, who facilitated immediate corrective action. Thereafter, the notice agent allowed the parolee to identify accommodation needs during the ADA review. For example, parolee Neale's (F71991) BPT 1073 indicated he is CCCMS but he adamantly claimed he is currently classified EOP. The notice agent made a note of the claimed EOP status on the BPH 1073 and took additional steps to ensure the parolee understood the notice process and the documents reviewed. Further research by the monitors revealed several documents, including the DEC DAI summary screen, that indicate the parolee is at the EOP level of care; a miscellaneous decision notice dated 2/20/09 revealed he is assigned to an EOP case load and the signed conditions of parole, dated 8/15/08, document that Neale is at an EOP level of care. This may suggest that the field file review was incomplete, information was not entered into DEC correctly, DEC was not checked prior to the notice, or the parolee's disability information was not in the field filed.

***Failure to utilize DEC for notices and incorrect documentation regarding disabilities***

A review of the notice documents for all processes observed during the tour (21 Notices of Rights, seven Probable Cause and three Revocation Hearings) indicates that notice agents are not consistently reviewing DEC as part of their review for disabilities and that contradictory information is contained via comparison of the paper and DEC 1073s. However, a positive step in the form of corrective action occurred to remedy this on 3/4/09 when staff from DAPO Headquarters conducted remedial training for all notice agents and supervisors in the Los Angeles area. Part of the training included instruction on DEC, how and when to review the database, and how to input information into DEC following completion of a notice. Notice agents were informed that whoever completes the file review must review DEC for disability information and that the 1073 information gleaned from the notice itself must be entered into DEC following the notice. It appears that the training has already had a positive impact on the accuracy of disability-related information contained on the paper 1073 and in DEC. For example, the notice for 10 cases occurred prior to the remedial training and seven had some deficiency (70%), while only five cases out of 21 (24%) that were reviewed after the training completed had some deficiency. A summary of each deficient case is below.

**1) Notices conducted prior to 3/4/09 remedial training (Exhibit 4)**

- Perkins (T28890)- Section I of the paper 1073 was not completed, with the exception of a GPL score entered. DEC was not reviewed prior to the notice- the Institutional Data section in DEC shows the parolee is CCCMS but that information is not contained on the paper 1073. Finally, the paper 1073 information was not entered into DEC following the notice.
- Lonchon (F65951)- DEC was not reviewed prior to the notice- the Institutional Data section in DEC shows the parolee is CCCMS but the paper 1073 indicates no disabilities exists.

- Colburn (F61958)- The parolee indicated he needs a magnifier on the paper 1073 but the electronic version of the 1073 in DEC states the parolee does not need any help for his parole proceedings. This is contradictory information.
- Vreeland (P46705)- The paper 1073 has two contradictory boxes marked- one notes the parolee's CCCMS status and another states that no disabilities were identified from the field file review.
- Moore (F27060)- DEC was not reviewed prior to the notice. The Institutional Data section in DEC shows the parolee is mentally ill but this information is not noted in Section I of the paper or electronic 1073.
- Wright (V02488)- DEC was not reviewed prior to the notice. DEC indicates the parolee is mobility impaired and requires a wheelchair but Section I of the 1073 contains no mention of this.
- Young (P05682)- DEC was not reviewed prior to the notice. DEC reveals a TABE score of 3.2 but that information is not noted on the paper or electronic 1073. In addition, the parolee indicated in Section II of the 1073 that he needs help understanding procedures and forms but the notice agent did not document in Section III how effective communication was facilitated given the parolee's needs- the only thing noted is that the parolee read Section II of the form.

## **2) Notices conducted after 3/04/09 remedial training (Exhibit 5)**

- Carrillo (T39201)- DEC was not reviewed prior to the notice. Both the Institutional Data section and the DAI Summary Screen in DEC indicate the parolee's CCCMS status, but Section I of the paper 1073 indicates the parolee has no disabilities.
- Neal (C26987)- DEC was not reviewed prior to the notice. Both the Institutional Data section and the DAI Summary Screen in DEC indicate the parolee's CCCMS status, but Section I of the paper 1073 indicates the parolee has no disabilities.
- Newkirk (K17991)- DEC was not reviewed prior to the notice. Both the Institutional Data section and the DAI Summary Screen in DEC indicate the parolee's CCCMS status, but Section I of the paper 1073 indicates the parolee has no disabilities. In addition, there is a comment written on the paper 1073 documenting the parolee's claim that he is CCCMS, but that comment was not included in the electronic 1073 entered into DEC.
- Padilla (F96134)- There was a discrepancy between the paper and electronic 1073s- the paper 1073 indicates the parolee did not request any help for his parole hearing, while the electronic 1073 indicates the parolee needs a vision magnifier.
- Neale (F71991)- The mental health classification level was incorrectly noted on the paper 1073- as of 5/20/08 DEC indicates the parolee is EOP, but the paper 1073 documents the parolee is CCCMS.

Although the notice agents must continue to improve their practices related to DEC reviews and DEC entries, the remedial training provided in March has had a positive impact. The OCC will continue to monitor this issue and recommend additional corrective action should field practices indicate the need.

### ***Review of the BPH 1073s***

A review of the pre-tour revocation packets revealed the following pertinent problems (**Exhibits 1-B and 6**):

- In 21/150 (14%), the BPT 1073 was not included in the packet. This is a crucial document relating to the field file review for disabilities, self-identified requests for any needed accommodations during the proceedings, and staff documentation of the provision of effective communication. It should be included in every revocation packet provided to the BPH and CalPAP.
- In 18/41 (44%), no source document was attached to the BPT 1073 although Section I identified a disability, needed accommodation, or reading/GPL level below 4.0. Where a disability is noted in Section I, the verifying source document should be included in the revocation packet.
- In 11/129 cases (9%), Section II of the BPT 1073 had no boxes marked. During the interview, if the parolee self-identifies that no disabilities or accommodations are needed during his/her parole proceedings, then the “I do not need any help for my parole hearing” box should be marked. If, however, the parolee self-identifies that he/she has a disability or that an accommodation is needed, then the appropriate box should be checked.
- In 9/129 cases (7%), the parolee indicated an accommodation need in Section I and/or Section II of the BPT 1073. However, the notice agent did not document in Section III that an accommodation was offered or provided during the NOR to facilitate effective communication based on the parolee’s self-identified need. This should have been documented.
- In 19/150 cases (13%), the BPT 1100 was not included in the revocation packet. This form should be included in all revocation packets because it is the acknowledgement of what forms/documents were provided to the parolee during the Notice of Rights/Charges.

In one case (<1%) no boxes were marked on the BPH 1100 to indicate whether the parolee had been provided all notice documents. (**Exhibit 7**).

### ***Adequate statement of facts on the CDCR 1502-B***

The *Valdivia* Permanent Injunction requires the parolee be given “**actual notice of the alleged parole violation, including a short factual summary of the charge conduct.**” The CDCR 1502-B is the document used to serve the parolee notice of the alleged violations and should therefore place them on alert to the conduct that is alleged to have constituted a violation of parole.

Officers from outside law enforcement agencies do not provide the details of most arrests prior to completion and submission of their arrest report. Therefore, the parole agent does not know the facts to support the alleged violations until the arresting officer generates the police report. CDCR maintains that stating the information provided by the arresting law enforcement agency, including the name of the arresting agency and charge(s) the parolee was reportedly arrested for, is sufficient until the final police report is made available to the parole agent.

In those instances where DAPO initiates the arrest, or the facts underlying the arrest are known to the parole agent, a short factual summary of the charged conduct, including a summary of the parolee behavior and/or evidence leading to the violation charge(s), should be included on the

CDCR 1502-B (rather than a minimal recitation of the charges themselves). For example, if a parolee is arrested by law enforcement on a Parolee at Large (PAL) warrant, the parole agent should indicate on the 1502-B the facts that support the absconding charge. The short factual summary might read that the agent attempted a home visit and left a card with reporting instructions and contacted family members living at the parolee's residence of record who indicated that they have not seen the parolee for weeks. Such language provides a factual basis for the charge. It is insufficient if the parole agent simply indicates the parolee was arrested on a PAL warrant. The parolee behavior that gives rise to issuance of the PAL warrant is the critical component of the required factual summary. A short factual summary of the charged conduct is necessary to serve the parolee notice of the alleged violations and allow him/her to know the facts that supported placement of the parole hold and begin formulating a defense. This is required by the Permanent Injunction.

In 52/135 cases (39%) reviewed prior to the tour, the CDCR 1502-B failed to meet the Injunction's requirement to provide a *short factual summary of the charged conduct* for purposes of serving the parolee notice (via the 1502-B). (**Exhibits 1-B and 2**). The OCC acknowledges DAPO's effort to bring this area into compliance; the 2004 roll-out training for *Valdivia*, refresher training conducted in 2006 and 2007 for agents, the informational memorandum dated January 2, 2008, entitled "Violation Report Format and Content," a *Valdivia* Alert on June 12, 2008, directing staff to include a short factual summary for all known charges and the most recent statewide training for all parole agents in 2008. However, the OCC further recognizes DAPO's instruction regarding minimum standards for factual summaries has not corrected the deficiency. Most of the inadequate factual summaries surround absconding charges where the agent simply noted that the parolee was arrested for a PAL warrant or that the BPH had acted to suspend parole. Although this serves as a basis for a probable cause determination, the 1502-B is also used to serve the parolee notice of the charges and the agent must provide the facts that led to the PAL status in order to provide factual context regarding the behavior that gave rise to the allegation that the parolee absconded. The US(s) should not approve 1502-Bs that do not conform to the instruction provided by DAPO Headquarters. Deficient cases stemmed from a multitude of parole units in Southern California.

### ***Charges added after notice***

There were 63 cases reviewed prior to the tour in which charges were added after the parolee was noticed. There were 23 cases (37%) in which investigation revealed the parole agent had, or should have had, information to support the additional charge(s) at the time the 1502-B was authored. (**Exhibit 1-B**). In 40 cases, investigation revealed that the parole agent did not have knowledge of the charge(s) when writing the 1502-B, therefore justifying the additional charge(s) on the violation report when written.

The OCC found that charges surrounding failure to abide by registration requirements were most often added after the notice in the cases reviewed for this tour. The chart below includes some example cases where charges were known, or should have been known, at the time the 1502-B was completed:

Parolee Name CDC #	Parole Unit	Charges Added to Violation Report after Parolee Served Notice	Charges Known or Knowable
Booth, V38763	San Gabriel Valley 1	1). Failure to Follow Instructions	The agent stated in the violation report that on 12/10/08 Booth left a number for contact, the agent then left a message for him instructing him to contact him. On 12/11/08 the board acted to suspend Booth's parole. The failure to follow instruction was known by the agent prior to the arrest and should have been included on the 1502-B.
Brackins, V49728	Long Beach 2	1). Violation of Special Conditions of Parole "No Consumption of Alcohol." 2). Violation of Special Conditions of Parole "No Contact with Zina Williams."	The agent indicates in the violation report that he interviewed the parolee on 1/27/09 (date of arrest), at which time the parolee admitted to him that he went over to Zina Williams apartment; was under influence of alcohol- both violations were known to the agent on the date of arrest.
Byrd, V44606	El Monte 3	1). Travel Beyond 50 miles from city or residence without DAPO approval. 2). Failure to attend Parole Outpatient Clinic	The agent clearly articulated on the violation report the dates on which the additional charges occurred were well before the 2/03/09 arrest. Both violations occurred approximately four months prior to the current arrest.
Camacho, T40157	Long Beach 2	1.) Use of Illicit C/S. 2). Violation Special Conditions of Parole, "Fail to Complete Batters Course."	The parole agent indicates on the violation report that on 12/17/08 ANT was conducted and subsequent test result proved positive for methamphetamine. The agent also reports that parolee was dismissed from the domestic violence course on 8/26/08 and again on 1/02/09 both clearly known before the 1/19/09 arrest.
Cervantes, H86496	Expo 2	1.) Possession of Drug Paraphernalia	The agent states in the violation report that Los Angeles Police, in the company of two parole agents (DAPO representatives) found the heroin and two glass pipes (oral inhalation device) at the time of the arrest. Therefore DAPO staff had knowledge of the charge at the time the arrest was made and the charge should have been included on the 1502-B.
Doig, V64039	Pasadena 3	1.) Use of Methamphetamine 2.) Absconding	The violation report documents that on 1/22/08 the parolee signed a statement of admission that he used methamphetamine between 1/19/08 and 1/21/08. The statement was signed prior to the arrest. On charge two the agent reports that on 1/29/08

			he submitted a parolee at large report and BPH acted to suspend his parole on 2/08/08. The manner in which the violation report is authored clearly articulates the agent had knowledge of two charges prior to the current arrest.
Hunt, F39881	San Fernando Val. 1	1.) Failure to Register per H&S 11590	The agent indicates on the violation report that Hunt had not registered per H&S 11590 since his release of 1/13/08. DAPO had knowledge that Hunt, in the past twelve months, had failed to comply with registration requirements at the time of arrest. H&S registration requirements are outlined in DAPO policy 08-05 which states in part that a copy must be obtained for retention in the field file.
Long , T40550	South Central 5	1.) Failure to Register per H&S 11590	The agent indicates on the violation report that Long had not registered per H&S 11590 since his release of 7/23/06. It is evident that DAPO had not been provided evidence of the parolee's compliance with H&S registration requirements when the 1502-B was authored. H&S registration requirements are outlined per DAPO policy 08-05 which states in part a copy must be obtained for retention in the field file.
Ortiz, J29853	San Fernando Val. 1	1.) Absconding	The agent submitted Veri - Tracks Global Tracking System as supporting evidence for charge one absconding. The agent further states that on 1/24/09 an emergency miscellaneous decision was submitted to BPH to suspend parole because his whereabouts were unknown. Clearly the supporting evidence was known to the agent at the time the 1502B completed.
Portillo, F13268	Van Nuys 1	1.) Failure to Follow Instructions from DAPO-Enroll in STAR Class	The agent states in the violation report that on 12/29/08 Portillo was instructed to enter STAR program on 1/05/09. On 1/14/09 the agent received a notice from the STAR instructor indicating that Portillo had not enrolled. The agent had knowledge of Portillo's failure to follow instructions charge prior to the 1/30/09 hold date and subsequent completion of the 1502B.
Pye, D26088	Inglewood 4	1.) Failure to Follow Instructions. 2.) Failure to Register per H&S 11590.	The violation report reveals the agent was advised by a ICDTP Walden House representative that on 10/14/08, Pye had been unsuccessfully discharged from the program, prior to

			the current arrest. Also, because the field file contained verification that the parolee had registered per H&S 11590, the agent knew this was a viable charge at the time the 1502-B was authored. H&S registration requirements are outlined in DAPO policy 08-05 which states in part a copy must be obtained for retention in the field file.
Salazar, E69701	Santa Fe Springs 2	1.) Failure to Register 290	The agent reported that he obtained verification from the Records office at CRC that Salazar last paroled on 1/10/09 and failed to report by 1/12/09 as required. The agent further states Salazar failed to register (i.e. there was no confirmation of registration in the field file). Again, this failure to register was know or should have been known when the 1502-B was authored. H&S registration requirements are outlined in DAPO policy 08-05 which states in part a copy must be obtained for retention in the field file.
Solomon, G03886	North Long Beach	1.) Traveling Beyond Fifty Miles from Residence W/O P&CSD Approval	In the narrative section of the 1502B the AOR cites one charge (terrorist threats), yet he includes that he spoke with a Deputy from Riverside Sheriff who advised him that parolee Solomon had been at the site of victim's employment in Riverside (which exceeds 50 miles from his residence). The AOR fails to include this known charge on the 1502B yet adds it at the violation report step. This added charge was known at the time the 1502B was authored and should been made available at the NOR step.
Stewart, F42759	South Central 2	1.) Failure to Report to DAPO.	The violation report indicates that on 1/13/09 parolee Stewart was released form LACJ with instructions to report the next business day and he failed to do so. Therefore the AOR knew the parolee failed to report prior to the current arrest, but this charge was not included on the 1502-B.
Taylor, G04794	Northeast I	1.) Absconding. 2.) Failure to Attend POC.	The AOR states in the violation report that parolee Taylor failed to comply with instructions given on 1/20/09 to report to a POC appointment and meet with AOR. Taylor failed to comply with both instructions given. Taylor was arrested and hold placed on 2/04/09, after he had failed to attend

			POC and report to his agent. The AOR knew of these two charges at the time the 1502-B was written.
Unruh, V95417	Inglewood 4	1.) Failure to Report.	The AOR states in the violation report that on 12/29/09 Unruh was released from custody and despite specific instructions he failed to report to the parole office following his release. The AOR had knowledge of this violation prior to the 1/24/09 arrest.

❖ **CORRECTIVE ACTION PROPOSED:**

- Paragraph 11 of the *Valdivia* Permanent Injunction requires that the parolee be served with *actual notice of the alleged parole violation, including a short factual summary of the charged conduct*. The OCC recommends that DAPO review any current policies and procedures that address what information must be included on the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met, if necessary. It is also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary.
- Unit Supervisors must ensure that parole agents include all known or knowable charges on the 1502-B when it is written, as required by the recent DAPO training, which addressed this requirement and directs agents to include all known charges at the time the 1502-B is authored.
- The OCC will continue to monitor the issue of missing source documents and conduct investigation to determine the causes and report to the appropriate division the findings and recommended corrective action. DAI and DAPO should also review pre-release packet procedures regarding the inclusion of source documents to determine why source documents are not consistently included in parole packets or forwarded to the parole units for inclusion in the field file.
- Revocation packets, including those for CalPAP, must be complete when sent from the parole units (including the notice documents). Clerical staff should be provided remedial training on how to correctly compile two complete copies of the revocation packets prior to mailing them from the parole units. Similarly, notice agents should be reminded that the notice paperwork must be returned for inclusion in the complete revocation packet.

#### **4. Unit Supervisor review of violation report and processing of cases out of parole units**

##### ***Timeliness***

A timely Unit Supervisor (US) review of the violation report was conducted in 140/142 revocation packets reviewed prior to the tour (99%). **(Exhibit 1-A)**. The Unit Supervisors should be commended for the 11% increase in timeliness at this step compared to the statistics reported in the last LACJ self-monitoring tour report. The February 2009 RSTS “Closed Case Summary – Valdivia Timeliness Rules” report reveals a 97% compliance rate at this step for cases processed at LACJ. **(Exhibit 2)**.

##### ***Unit Supervisor interview***

The OCC monitors had an opportunity to interview one US at the Compton parole complex. As identified in the December 5, 2008 report issued by plaintiffs’ counsel, there was previously only one office in operation in Compton, supervised by a retired annuitant US, with impending activation of a second office. Since that time a second parole office was opened and there is one US (a different retired annuitant) assigned to supervise Compton #1, while an acting AUS has been assigned to cover the US duties for Compton #2.

The US reported that interviews for a permanent Parole Agent III position would be conducted the following week to add additional supervisory assistance. The OCC anticipates that DAPO’s impending hire of a full time US and the recent placement of a full-time FUNA at the Compton parole complex will improve DAPO-related timeliness statistics and qualitative reviews for cases processed out of the Compton units.

##### ***Arrests and convictions together on the CDCR 1521-B***

27/147 (18%) CDCR 1521-Bs reviewed prior to the tour included arrests and convictions together in a way that made it impossible to differentiate the two. **(Exhibits 1-B and 8)**. This is problematic because it impedes the Par Ad and Deputy Commissioners’ ability to determine priority status or eligibility for remedial sanction programs. In 2008, DAPO provided training to all parole agents, directing them to differentiate arrest from convictions on the 1521-B. Unit Supervisors should not approve violations reports that lump arrests and convictions together on the 1521-B.

##### ***Failure to include supporting evidence (CDC 1515- conditions of parole)***

There were 27 cases reviewed prior to this tour in which the parolee was charged with violating a special condition of parole and in 14 of those cases the CDC 1515 was not included as supporting evidence (verifying existence of the special condition) in the revocation packets (52%) **(Exhibit 1-B)**. Unit Supervisors should not allow a case to proceed when supporting evidence is not included in the revocation packet to support the charge.

There were also 21/150 cases (14%) in which the CDCR 1654 (state’s witness list) was not included in the revocation packet. This form should be included in all revocation packets because it indicates the request for witnesses at subsequent proceedings and defense counsel and the parolee must be informed of the state’s intent (or lack of intent) to call witnesses as part of their defensive legal strategy. **(Exhibit 1-B)**.

### ***Mailing revocation packets from parole units***

Parole units should be sending two identical copies of revocation packets to the DRU for each case, one for the BPH and one for CalPAP. The monitors reviewed the mail received at the DRU during the tour and were displeased at the state of the packets received. There were mail packages that did not contain two identical copies of the packets, and in some cases there were two copies of partial packets and loose pages included in the mailing that were never copied and included in the BPH/attorney copies. There were also complete copies of BPH packets accompanied by incomplete copies of attorney packets. DRU staff is then forced to sort through every mail package because so much is incomplete or one cannot tell whether it is complete or not because there are additional unattached documents in the mailing. This practice has created a large additional workload for DRU staff, which can hopefully be avoided in the future so they can focus valuable staff time on other work. DAPO Headquarters was notified of this and confirmed that the subject will be added to the training provided by the Region III Par Ads.

### **❖ CORRECTIVE ACTION PROPOSED:**

- **Unit Supervisors must not approve violation reports wherein arrests and convictions are not differentiated on the CDCR 1521-B.**
- **Unit Supervisors must not approve violations reports where the parolee is charged with violating a special condition of parole when the CDC 1515 is not attached as supporting evidence.**
- **Clerical staff at the parole units must be provided remedial training requiring that they send two identical copies of each revocation packet to the DRU.**

## **5. Parole Administrator Review**

### ***Timeliness***

A timely Par Ad review occurred in 144/150 (96%) cases. **(Exhibit 1-C)**. The six late cases averaged 2.3 days late. *Id.* In three of the six late cases the revocation packet was received late from the field unit. One case (Rubio K86467) was seven days late due to the revocation packet being initially sent to the wrong DRU. It is extremely important that parole units compile complete revocation packets and send them to the correct DRU within timelines. Revocation packet scanning would alleviate the frequency of this problem.

### ***Parole Administrator interview***

The monitors had an opportunity to interview three Par Ads at the Glendale DRU. One Par Ad serves in a relief capacity when a permanent Par Ad is out on an extended leave due to special assignment, vacation, or medical leave. The relief Par Ad stated that with a full compliment of Par Ads, all revocation packets requiring a Par Ad review are completed and forwarded to the DRU staff for continued processing by the end of the day. The Par Ad reported he reviews each case for completeness and ensures the alleged charges are accurately documented and substantiated within the violation report and accompanying evidence. He also stated he contacts agents for clarification or returns packets that require additional investigation and/or evidence. He will dismiss or amend charges that are not supported by the evidence and notes all the reasons in the comments section within RSTS. The Par Ad stated he reviews each case to determine if a remedial sanction would be appropriate in lieu of a return to custody. He

indicated reports are sometimes missing the most basic information regarding parole status and commitment offense, which can result in the inability to determine if a parolee is eligible for a remedial sanctions program.

Due to the recent focus on LACJ and Region III, DAPO's leadership implemented corrective action by placing two Par Ads on a special training assignment to implement targeted training for DAPO staff within Region III. At the time of the monitoring tour, the Par Ads had just completed a lesson plan to specifically address parole revocation packet deficiencies identified during past monitoring tours (many of the training materials were those previously presented to DAPO staff during training sessions- approved by plaintiffs' counsel). This training will be provided to the parole office Unit Supervisors (who will then train agents), FUNAs, DRUNAs and clerical support staff. The OCC will continue to monitor these issues and work collaboratively with DAPO to track progress and anticipates the training will lead to improvements, but it may take some time for parole agents to incorporate the training into their everyday business operations.

The Par Ads in Region III deserve to be commended for their work on remedying the compliance issues at LACJ. They have all shown tremendous dedication to developing and providing meaningful training to parole staff.

## 6. Return to Custody Assessment

### *Timeliness*

139/150 Return to Custody Assessments (RTCA) analyzed prior to the tour were timely (93%). (**Exhibit 1-A**). The 11 late cases averaged 1.7 days late. *Id.* One RTCA was seven days late and all others were only one or two days late. *Id.* RSTS shows lower compliance at the RTCA step- only 85% of RTCAs in January 2009 and 82% of RTCAs in February 2009 were reported as timely in RSTS. However, it has become apparent that late RTCAs cannot be attributed exclusively to some failure on the part of BPH. Analysis of the 11 late RTCAs is summarized in the chart below, as well as the reason the case was late.

CDC #	Hold Date	Summary of Case Processing	Reason Case Late at RTCA
F15422	1/26/09	San Luis parole unit mailed the packet to DRU on 2/6/09. Packet received at DRU on 2/9/09 (10 business days after parole hold placed and the NLT date for the RTCA). The Par Ad reviewed the case the same day but the DC did not review the case until 2/10/09 (one business day late)	Case was received late at the DRU from the San Luis Obispo parole unit and delay in GSO delivery to DRU.
F51662	1/3/09	Harbor parole unit sent packet to DRU on 1/16/09. Packet received at DRU on 1/16/09 (10 business days after parole hold was placed and the NLT date for the RTCA). The Par Ad reviewed the case the same day but the DC did not review the case until 2/20/09 (due to a weekend and holiday). RTCA was one business day late.	Case was received late from the Harbor parole unit
D62088	1/25/09	Inglewood 4 parole unit sent packet to DRU on 2/6/09. Packet received at DRU on 2/6/09 (10 business days after parole hold was placed and the NLT date for the RTCA). The Par Ad reviewed the case the same day but the DC did not review the case until 2/9/09 (due to a weekend).	Case was received late from the Inglewood parole unit

		RTCA was one business day late.	
P91743	1/7/09	Exposition Park parole unit sent packet to DRU on 1/20/09. Packet received at DRU on 1/21/09. Par Ad completed case review on 1/21/09 and provided to BPH. DRU entered case into RSTS on 1/21/09 and forwarded to DC for RTCA. RTCA not completed until 1/23/09 (one business day late)	BPH late in completing RTCA.
D73190	1/7/09	Palm Springs parole unit sent the packet to the CIM DRU on 1/16/09. The CIM DRU received the packet on 1/20/09 and CIM forwarded the packet to the LA DRU on 1/20/09. The LA Par Ad reviewed the case on 1/21/09 and returned the case to DRU staff on 1/22/09. The RTCA was completed on 1/23/09. RTCA was two days late.	Palm Spring parole unit sent case to wrong DRU, delay in GSO delivery, Par Ad held on to case for one day before returning to DRU staff.
V55791	1/21/09	Antelope Valley parole unit sent packet to DRU on 2/3/09. DRU received packet on 2/3/09. Par Ad completed review on 2/3/09 but did not return the packet to DRU staff until 2/5/09 (held packet for two days). RTCA completed on 2/5/09. RTCA was one business day late.	Par Ad held packet for two days after review before returning to DRU staff to forward to DC for RTCA.
P82908	1/7/09	Riverside 4 parole unit sent packet to DRU on 1/16/09. DRU received packet on 1/21/09 (this includes a weekend and one holiday). Par Ad completed review on 1/21/09 and returned to DRU staff the same day. RTCA completed 1/23/09, two days after the Par Ad provided BPH the case. RTCA was one business day late.	Slight delay in GSO delivery of case from parole unit to DRU and BPH held case for two days before RTCA completed.
V95417	1/24/09	RSTS does not show when case sent from parole unit or received at DRU. Par Ad review occurred 2/9/09 and RTCA completed 2/10/09 (one business day late).	Unable to determine
T64485	1/9/09	Mid Town 2 parole unit sent packet to DRU on 1/23/09. DRU received packet 1/26/09 (due to a weekend). Par Ad reviewed the case the same day on 2/26/09. Case was returned to BPH on 1/27/09. RTCA completed 1/27/09 (one business day late).	Delay in GSO due to weekend and Par Ad held case for one day before returning to BPH for the RTCA.
G07921	1/6/09	Packet received at DRU from Bakersfield 6 parole unit on 1/22/09 (11 business days after parole hold placed and one day past NLT for RTCA). RTCA occurred 1/23/09 (one business day late).	Case was received late from the Bakersfield 6 parole unit.
K84647	1/9/09	San Gabriele Valley 2 parole unit sent packet to the CIM DRU on 1/21/09. However, the packet was not received at the LACJ DRU until 2/3/09 (no information to indicate why packet so late in transit other than that it was first sent to CIM). Par Ad completed review on 2/3/09 and returned the case to BPH on 2/4/09. RTCA completed 2/4/09 (seven business days late).	Although the San Gabriele Valley 2 parole unit mailed the packet timely, the packet was sent to the wrong DRU and was in transit for 13 calendar days before it was received at the correct DRU.

The timeliness of RTCAs at LACJ has been a problem reported in prior monitoring reports issued by both plaintiffs' counsel and CDCR. Reports often focused on a lack of adequate DC staffing as a root cause of late RTCAs; however, the table above shows that this is not a significant factor contributing to untimeliness.

The ACDC and leaders from BPH Headquarters observed that many cases show up late at the RTCA step in RSTS because the revocation packets were not timely forwarded following the Parole Administrator review. Analysis indicates that the Par Ads historically completed some

case reviews then made a RSTS entry indicating they forwarded the packet back to DRU staff, but they actually held on to the packet because they had requested additional documents from the parole unit. Therefore, although RSTS showed that the case had been forwarded to BPH the packet had not physically been forwarded. DRU staff began making an entry into the RSTS Case Comments section to document the date on which they actually received the packet back from the Parole Administrator (to enter the charges into RSTS and forward the packet on the DC for the RTCA) and in several cases it appears that the Parole Administrators were, in fact, holding on to packets while awaiting missing documents (a few such cases are included in the table above). The ACDC and Par Ads have since agreed to forward packets to the BPH immediately following the Par Ad review and that missing documents will be married up with the packet (and a copy faxed to CalPAP) so that RTCAs will be completed timely.

The table above also reveals that revocation packets are not consistently sent to the DRU from the parole units in a timely manner and that delays in GSO delivery also contribute to untimely RTCAs. Revocation packet scanning would significantly decrease these problems but DAPO would be well served to direct parole staff on the requirements that they mail packets to DRUs in a timely manner and that they are sent to the correct DRU.

The above information related to untimely RTCAs was transmitted to DAPO Headquarters prior to dissemination of this report and DAPO agreed that the identified contributors to late RTCAs would be added to the agenda for the on-going training conducted by the Region III Par Ads, with specific training to be provided to clerical staff at the parole units.

The OCC did not identify any other pertinent compliance deficiencies at this step of the process. There was one case reviewed prior to the tour in which the DC did not document their consideration of remedial sanctions on the BPH 1104-RTCA. (**Exhibits 1-B and 9**).

❖ **CORRECTIVE ACTION PROPOSED:**

- **Parole units must send revocation packets to the DRU within the mandated time frames and ensure that they are sent to the correct DRU location. The inability to provide the DRU packets in a timely manner causes the Par Ad review and RTCA to be late, and can lead to late probable cause and revocation hearings.**
- **Parole Administrators should forward cases to the BPH after their review rather than waiting for additional documents from the parole unit before forwarding the case to BPH. This recommendation would require that a process be put into place to marry documents up with the packet and provide them to CalPAP after receipt. At this time it appears the Par Ads and the ACDC have worked out a solution to this problem by forwarding cases immediately after their review while awaiting receipt of documents.**
- **CDCR should aggressively pursue revocation packet scanning, which would eliminate the additional time expended when mailing packets. Packet scanning would make packets immediately available to the DRUs and would save time at virtually every step of the revocation process.**
- **The BPH must ensure that RTCAs are completed timely after the case is returned from the Par Ad following their review.**

## **7. Appointment of Counsel**

### ***Timely appointment of counsel***

BPH staff at the Glendale DRU does not utilize the revocation packet tracking feature in RSTS to document when packets are made available to CalPAP. As a result, the OCC must rely on data generated by CalPAP to report how often counsel is appointed in a timely manner. According to CalPAP, 96.84% of cases assigned in September 2008, 97.15% of cases assigned in October 2008, 96.59% of cases assigned in November 2008, and 95.47% of cases assigned in December 2008 were timely. For the first two months of 2009, 95.64% of cases in January and 95.65% of cases in February were assigned timely. **(Exhibit 1-D).**

BPH DRU staff received RSTS training in 2008 and were instructed on the use of the revocation packet tracking feature in RSTS; however, current staff vacancies at the DRU likely contributes to the inability to complete the packet tracking component with respect to tracking the provision of packets to CalPAP.

### ***Counsel provided complete documentation***

It appears that CalPAP is not consistently provided complete revocation packets at the time counsel is appointed. For example, Exhibit 1-B shows that the following documents were missing from the CalPAP revocation packets reviewed prior to the tour:

- In 15/150 cases (10%), the CalPAP packet did not contain a copy of the CDCR 1502-B, which is used to provide the parolee notice of the impending charges.
- In 21/150 cases (14%), the CalPAP packet did not contain a copy of the BPH 1073, which informs counsel of any previously identified and/or self-identified disabilities and accommodation needs. Defense counsel must be provided this information in order to establish effective communication with the parolee during the attorney/client interview and subsequent proceedings.
- In 19/150 cases (13%), the CalPAP packet did not contain the BPH 1100, which serves as acknowledgement that the parolee received notice of his/her rights and the alleged charges.
- In 14/27 cases (52%) where the parolee was charged with violating a special condition of parole, a copy of the CDC 115 was not included as supporting evidence to allow defense counsel to verify the existence of the special condition or whether the special condition was effectively communicated to the parolee.
- In 5/145 cases (3%), the CalPAP packet did not contain a copy of the CDCR 1521-D, which may include parole agent, US, and Par Ad recommendations for case disposition.
- In 21/150 cases (14%), the CDCR 1654 (state's witness list) was not included in CalPAP's copy of the packet. Defense counsel must be provided with the State's witness list at the time of appointment so counsel can formulate a defense and determine witnesses the parolee should subpoena.

Although many attorney packets were missing certain documents, the Par Ads reported that they thoroughly review packets for missing documents, request them from the appropriate contacts, and have DRU staff fax missing documents to CalPAP once received from the parole units.

### ***Add-ons***

Deputy Commissioners and CalPAP attorneys alike both reported that add-on cases, which result in the parolee being assigned counsel the day of the probable cause hearings, and meeting with the attorney for the first time just prior to the probable cause hearing, continue to occur at LACJ. Although it is difficult to determine the number of add-on cases, BPH and CalPAP staff reported that they occur frequently. It appears that the most common cause of add-ons is the frequent movement of parolees between jails.

#### **❖ CORRECTIVE ACTION PROPOSED:**

- **DAPO's clerical staff at the parole units must ensure that they send two complete copies of revocation packets to the DRU for provision to CalPAP and the parole units must ensure that all required documents are included in the revocation packets sent from the parole units. Remedial training for DAPO staff on this subject is recommended.**

### **8. Effective Communication and Effective Communication with Appointed Counsel**

#### ***Missing BPT 1073s and/or source documents***

The BPH 1073 was not included in 21/150 (14%) revocation packets reviewed prior to the tour. **(Exhibit 1-B)**. In 18/41 (44%) cases where Section I of the 1073 indicated a disability, accommodation need, or reading/GPL below 4.0, no source document was attached. ***Id.***

According to CalPAP's December 2008 "Cases Missing 1073 & Source Documents Monthly Report," 97% of cases assigned to the Los Angeles office included the 1073 in the attorney's copy **(Exhibit 1-D)**. Of the 270 assigned cases that required an identifying source document related to a disability, 148 packets contained the necessary source document (55%). ***Id.***

#### ***Effective communication and Disabilities and Effective Communication System (DEC)***

**DAPO** - The FUNA was observed using DEC as required by current DAPO policy and procedures. The notice agents were provided training on March 4, 2009 to review their duties associated with review of DEC and DEC entries subsequent to serving a parolee notice. The FUNA and DRUNA reported they now enter the required information from the BPH 1073 into DEC within the mandated 24-hour time period. (See Section 3 above for additional analysis regarding incorrect use of DEC).

**BPH**- All five DCs observed during the tour reviewed DEC prior to or during the ADA reviews. In addition, all five updated DEC by completing Section V of the BPH 1073 at the conclusion of the proceeding.

#### ***Foreign language/CyraCom/Language People***

**DAPO** – The monitoring team was able to observe a notice agent conduct a notice using the CyraCom phone system. The process was conducted without any difficulties and all parties were able to hear the interpreter adequately.

**BPH** - The monitors did not observe any proceedings requiring the use of foreign language translation. The hearing rooms are equipped with Language People Phones, which are used for probable cause hearings. Live interpreters are utilized for revocation hearings.

***ADA accommodations available***

**DAPO** – The notice agents were in possession of the required ADA equipment. Several parolees were observed using the vision magnifier as an accommodation and this information was documented in the appropriate sections of the BPH 1073 and in DEC. Additionally, the monitoring team observed parolees escorted in wheelchairs to the notice area.

**BPH-** Accommodations were available in the hearing room locations. Vision magnifiers were available in all hearing rooms, hearing amplifiers were available as needed, and several parolees were observed being wheeled into hearing rooms in wheelchairs. The monitors observed the PCH for parolee Wright (V02488), who requires a wheelchair, is deaf in one ear and losing auditory function in the other, and has a history of participation in the Mental Health Delivery System. He also reported some vision problems. The BPH 1073 noted all four disabilities. The monitors verified that the parolee was provided a wheelchair for escort to and from the hearing, was provided a magnifier for use during the hearing, stated he was no longer CCCMS, and preferred reading lips as his primary means of communication. In fact, the parolee read lips so well that the monitors did not even notice the hearing impairment until the subject was discussed during the ADA review.

***Section IV of BPH 1073***

In 18/143 cases (13%) cases that proceeded to a PCH, DRU staff did not complete Section IV of the BPH 1073 in DEC as required by BPH policy and procedure. (**Exhibits 1-B and 10**). Section IV is designed to indicate what accommodation(s) the parolee will need during the revocation process (specifically the probable cause and revocation hearings) and to ensure that the accommodation is made available in advance of the hearing.

**❖ CORRECTIVE ACTION PROPOSED:**

- **BPH supervisors must ensure that DRU staff complete Section IV of the BPH 1073 in DEC in order to identify accommodations that must be provided during the PCH or revocation hearing. DRU staff may benefit from refresher training on how to review DEC and complete Section IV of the 1073.**

**9. Probable Cause Hearing**

***Timeliness***

142/143 PCHs analyzed prior to the tour were timely (99%). (**Exhibit 1-A**). The late case (Rubio, K84647) was six days late. *Id.* Parolee Rubio's hold date was 1/9/09 and the packet was originally sent from the parole unit to the CIM DRU. The CIM DRUNA noted the parolee had been transferred to LACJ and forwarded the notice documents to the LACJ DRUNA on 1/12/09. However, the complete revocation packet was not received at the LACJ DRU until 2/3/09 (16 business days after the hold and after the PCH NLT had expired). Because the packet tracking feature was not utilized throughout, it is impossible to determine what caused the delay

in receipt of the packet at the DRU. Revocation packet scanning would likely have avoided the delay.

CalPAP's monthly reports show that timely PCHs held at LACJ have fluctuated between 93.65% in October 2008, 98.19% in November 2008, and 95.91% in December 2008. Timely PCHs occurred in 95.17% of cases in January 2009 and in 95.47% of cases in February 2009. (**Exhibit 1-D**).

As both CalPAP's and the OCC's data show, timely hearings continue to occur in a vast majority of cases at LACJ, which is impressive given the huge volume of hearings held there and the constant movement of parolees within the jail system in Southern California. Plaintiffs' March 5, 2009 monitoring report for LACJ does not discuss any concerns regarding the timeliness of PCHs.

### ***Observed hearings***

The monitors observed three DCs conduct PCHs. The DCs at LACJ have greatly improved their practices associated with specifically reviewing the charges and factual basis for each charge since the last monitoring tour. Only one DC did not specifically review the charges during one hearing (because the parolee and counsel immediately began talking about the charge). All hearings began with a thorough ADA review and the DCs updated DEC in each case. The parolees and defense counsel were allowed to present evidence during each hearing and the DCs also considered mitigating circumstances when making their final dispositional offer. For example, one of the charges parolee Wright (V02488) faced was unauthorized possession of prescription drugs. Based on the parolee's statements that the prescriptions and needles were his, and that he injects certain vitamins given his extensive health issues, the DC found the statements credible and dismissed the charge.

Most aspects of each hearing occurred in a manner consistent with the Injunction and BPH policies and procedures. The DCs also specifically discussed remedial sanctions in most cases. A summary of the compliance issues associated with the observed hearings is as follows:

- Lonchon (F65951)- most of the "Basis for Conclusion" and "Basis for Disposition" boxes were already filled in before the hearing began (including the statement that probable cause existed and that remedial sanctions were considered and deemed inappropriate).
- Magana (F60744)-
  - The parolee reported he never received notice of his charges. However, he acknowledged that this may have been because he was in the hospital being treated for a dog bite until just prior to the PCH. The notice agent wrote on the 1073 "In hospital with dog bite. Deputy states he was uncooperative" and the parolee signature line also states the parolee "refused, uncooperative." If the parolee was never served, as he claims, it is unclear how the notice agent determined the parolee refused service or was uncooperative. It is also possible that the notice agent attempted the serve but the parolee was uncooperative.
  - When making the probable cause finding, the DC stated probable cause was based on the information contained in the violation report, but did not specifically vocalize the evidence that fulfilled each element of each offense. However, the

DC clearly documented the evidence relied on in making his findings on the BPH 1103-PCH.

- Wright (V02488)-
  - The parolee faced five charges. The DC found good cause on four and dismissed one; however, in the “Basis for Conclusion” box on the BPH 1103-PCH, the DC stated that probable cause was found on all charges, which is incorrect. (**Exhibit 11**).
  - CalPAP had not received the RTCA prior to the PCH.
- Moore (F27060)- The parolee elected to take an optional waiver. The DC did not make a probable cause finding on the charges. Probable cause must still be found and documented even if the parolee plans to take an optional waiver. The DC did not document any probable cause findings on the BPH 1103-PCH.

One DC verbally made his probable cause findings but did not explain his analysis of the evidence or what evidence he determined met each element of the charged offense(s). The monitor and Deputy Special Master interviewed the DC and it was clear that he internally conducts proper evidentiary analysis, but that he simply did not verbalize that analysis for the parolee. However, during his last few hearings he vocalized the evidence that supported his findings for the parolee and defense counsel. By clearly stating on the record the evidence that supported the DC’s findings, the parolee seemed not only to better understand the evidentiary ruling, but to accept the disposition offered. The other two DCs both verbalized their probable cause findings as well as the evidence which supported their findings in every hearing the monitors observed.

One DC explained that PCH scheduling could be improved. Because LACJ closes down for the lunch hour, PCHs are broken up into morning and afternoon groups. The DC reported that sometimes her morning group will have a large number of hearings and the afternoon group will have only a few, which occasionally leaves her with little work to do in the afternoon. In addition, because the schedules require attorneys to move from room to room (and from DC to DC), the attorney may be in one room for a PCH while a DC is waiting in another room for the attorney to complete the hearing in progress so they can hear the next PCH on the schedule.

Another DC voiced concern that she reviews a number of cases that proceed all the way to a probable cause or revocation hearing and she then discovers that the parolee has been treated ineligible for time credits when they are actually eligible, and vice versa. She explained that cases should not make it all the way to a hearing without verification of the parolee’s credit eligibility.

***Evidentiary basis for probable cause finding documented by Deputy Commissioner***

The DCs did not adequately document the evidentiary basis for their probable cause finding in 31/143 (22%) of the cases reviewed prior to the tour. (**Exhibits 1-B and 12**).

It is important that the DC explain the evidentiary basis for their rulings in the written record of the proceeding, rather than simple stating the ultimate conclusion that probable cause was found or the source of the evidence (a police report, the violation report, for example). The actual evidence that supports each element of the charged offense should be documented.

Only one of the seven BPH 1103-PCHs from the cases observed during the tour contained an inadequate summary of the evidentiary basis supporting the probable cause finding [Moore (F27060)- the parolee took an optional waiver but this does not dispense of the requirement to make and document a probable cause finding]. (**Exhibit 13**).

❖ **CORRECTIVE ACTION PROPOSED:**

- Associate Chief Deputy Commissioners must conduct remedial training, instructing the DCs to document the actual evidence relied upon in making a finding of probable cause. Merely citing the source of the evidence or the ultimate conclusion that probable cause was found does not comply with the requirements of minimum due process. The BPH would benefit from including this subject in the next training for DCs.
- DCs would benefit from additional training or instructing which directs them that probable cause must be found at a probable cause hearing, even when the parolee plans to take an optional waiver.
- DCs must be instructed to avoid making evidentiary or remedial sanction determinations before the parolee had been given a chance to present evidence.

## **10. Revocation Hearing**

### ***Timeliness***

Revocation hearings at LACJ continue to be timely for a vast majority of cases. 9/10 revocation hearings reviewed prior to the tour were timely- one (Stephenson, K45280) was 12 days late. (**Exhibit 1-A**). Mr. Stephenson was scheduled for a timely PCH but it was postponed due to a jail lockdown following a chicken pox outbreak. This was good cause for delay and extension of the NLT date for the revocation hearing. Therefore, the case was heard timely after the lockdown ended, and the parolee ultimately took an optional waiver at the hearing because the District Attorney filed criminal charges against him. All three revocation hearings observed during the tour were timely.

CalPAP's monthly reports show that of the revocation hearings for cases processed out of the Los Angeles CalPAP office, 96.32% in October 2008, 95.54% in November 2008, 97.32% in December 2008, 94.62% in January 2009 and 96.05% in February 2009 were timely. (**Exhibit 1-D**).

### ***Revocation packets reviewed prior to tour***

The ten cases did not yield any compliance deficiencies with respect to the revocation hearing. The DC's thoroughly documented the evidence presented and relied on in making their evidentiary findings, DEC entries were made, objections were documented, and the RSTS paperwork was complete with the exception of a few typos/inconsistencies, as discussed above.

### ***Hearsay evidence in parole proceedings***

Plaintiffs' counsel, in their March 5, 2009 monitoring report for LACJ, state that postponed revocation hearings where a witness, particularly the state's witness, fails to show up continues to be a problem at LACJ. The OCC did not detect this issue in any of the cases reviewed for this tour- there were no hearings postponed based on the failure of a state witness to appear. In fact, as noted below, DC's dismissed charges when a state witness failed to appear in a number of cases based on application of the *Comito* balancing test.

Parolee Stewart (F42759) was charged with receiving stolen property, failure to report to DAPO, and association with prohibited persons. Although police officers testified at the hearing, they lacked personal knowledge regarding whether the parolee was actually in the stolen vehicle or in the company of other gang members because all observations concerning the violations were made by a concerned citizen who failed to appear at the hearing. The officers could only offer hearsay evidence regarding the parolee's involvement. The DC applied the *Comito* balancing test and determined that the parolee's right to confront the concerned citizen outweighed the state's good cause for denying confrontation. The DC documented her analysis regarding the witness's availability, and balanced that against the strong confrontation interest given the fact that the witness was the only person who allegedly saw the parolee in the stolen automobile with other gang members. The parolee and defense counsel were also able to prove that the parolee had not failed to report to DAPO because he was still in custody. Ultimately, the hearsay statements of the concerned citizen witness were excluded (without postponement of the proceeding) and all charges dismissed based on insufficient evidence.

Parolee Hite (G05397) was charged with absconding and failure to register per PC 290. The violation report indicates that a friend of the parolee contacted the AOR regarding the failure to register charge. However, that witness was never subpoenaed or even identified, and therefore was not present to testify at the hearing. Defense counsel objected to the admission of any statements made by the witness based on *Comito*. The DC granted the objection, noting that no attempts were made to procure the witness for the hearing. The hearsay statements were excluded and the charge dismissed. Good cause was found on the absconding charge and the parolee was assessed a 7E return to custody.

Parolee Beltran (F47449) was charged with robbery and association with prohibited persons. The robbery victim was subpoenaed but did not appear to testify. A police officer testified that he saw the parolee and two other people walking together but they dispersed when they saw police. The police followed one of the parolee's companions into a phone booth and discovered a silver necklace hanging in the booth. The parolee and his companions were arrested in close proximity. The victim later identified the parolee and his companions as the robbers during a field line-up. Defense counsel objected to any statements the victim made regarding being robbed of a silver necklace. The DC overruled the objection, documenting "There is corroboration to the [victim's] statements evidenced by the presence of a silver necklace hanging in a public phone booth that parolee's accomplice entered when the police approached. It was the identical necklace that had just been forcibly taken. The parolee was arrested very close to the incident and the phone booth. This provides corroboration sufficient to overcome the parolee's right to interrogate the victim." Notably, the DC did not postpone the hearing in because the state's witness did not appear.

Defense counsel also objected to any statements regarding the administration of the field line-up because the administering officer was not present to testify. The DC denied the objection, documenting "A striped senior officer testified that the field show up occurred and it was described in the police report. This provides sufficient corroboration to admit the field show up identification." It appears that documentation of this specific objection was incomplete because no consideration was given to the underlying reason(s) the administering officer failed to appear or of the parolee's confrontation interest. **(Exhibit 14).**

### ***Observed hearings***

The monitors observed three revocation hearings during the tour. All three hearings began with a thorough ADA review, including a review of DEC, the BPH 1073, and an inquiry with the parolee in order to ensure that all accommodation needs had been met. All preliminary aspects of the hearings were conducted in accordance with the Permanent Injunction and BPH policies and procedures. A summary of each hearing is below.

Parolee Shively (V46102) was charged with spousal battery. The arresting officer testified that he responded to a call from the alleged victim's mother, who reported the parolee had battered the victim approximately 12 hours prior. The officer testified that the alleged victim had a black eye and a bald spot on the back of her head where her hair had been pulled out. The alleged victim also testified, stating she never spoke to the police when they came to her house but that her mother made all the statements and the police took pictures of her injuries. She reported her injuries came as a result of a party where bottles were thrown. The parolee testified that he never placed his hands on the alleged victim. Pictures of the hair recovered as a result of the victim's injuries were also presented but the copy quality was so poor that they offered little in the way of evidence and the DC declined to consider them. The DC dismissed the charge for insufficient evidence as no testimony was presented to support the allegation that the parolee battered the alleged victim.

Parolee Colburn (F61958) was charged with sexual battery based on an allegation that he fondled the alleged victim while they were sleeping in a bed with the victim's adult daughter after she told him to stop. The arresting officer testified that he responded to the disturbance call and the victim reported the parolee had fondled her in bed after she told him to stop, and that he did not see the bedroom in any disarray. The alleged victim then testified as a fearful witness- the Board Revocation Representative asked the victim if she was fearful prior to the hearing, she responded in the affirmative, and the parolee was removed from the hearing room (the parolee was placed in a hallway outside the room so the witness could not see him, but the door remained open so he could hear her testimony). This declaration of fearfulness comports with BPH Hearing Directive 05/10- Confidential and Fearful Witnesses, which states that the designation of a witness as fearful shall be based on the statement of the witness- if the witness states they are fearful, the criteria for designation has been met.

The victim testified that the parolee fondled her after she told him to stop, that he became angry and threw things around the room, and told her that she "was his." The victim's daughter, who was also sleeping in the bed, declared her self fearful and testified to the same facts as the alleged victim. The DC did not find the victim or daughter very credible because both of their

stories had some holes, and because they reported the room was a mess after the parolee threw things around but the arresting officer testified that the room was in order. Because all parties acknowledged that there was a verbal altercation between the parolee and victim, the DC amended the charge to threatening/harassing another, found good cause on the charge, and assessed the parolee credit for time served.

Parolee Loughran (J55161) was charged with possession of drugs for sale. The arresting officer testified that he and his partner conducted a parole search in the garage of the parolee's residence, where they found a scale, container with trace amounts of methamphetamine, and a pipe. The parolee's wife then testified that the belongings housed in the garage (which contained the scale and drugs) were her ex-husband's (now deceased) and that the pipe was hers. The DC amended the charge to possession of methamphetamine based on constructive possession- the drugs were found in a common area over which the parolee had use and access. The parolee was assessed Proposition 36 as disposition.

The DC's all documented the evidentiary basis for their good cause findings and dismissals on the BPH 1103-REV.

## 11. Remedial Sanctions

### *Timely transfer from custody to the ICDTP*

Plaintiffs' counsel reported that timely transport of parolees from LACJ to community based ICDTPs in Region III is still a significant problem. Their March 5, 2009 monitoring report provides examples of four cases in which there was significant delay between the time the parolee was assigned ICDTP and the time the Division of Addiction Recovery Services (DARS) was notified of the assignment. The monitors followed-up on this issue during the tour by reviewing the ICDTP assignment logs faxed from BPH to DARS. The fax verifications reveal the following:

Name	CDC #	Date ICDTP assigned	Date BPH sent assignment log (via review of fax verifications)	Date DARS reports receipt of assignment log from BPH	# of business days between BPH sending assignment and DARS receipt of assignment
McCoy	W68262	12/31/08	1/6/09	1/20/09	9
Lewis	X10835	12/19/08	12/22/08	1/15/09	16
Rosales	X15547	12/31/08	1/6/09	1/20/09	9
Jackson	X09475	1/9/09	1/12/09	1/15/09	3

There is clearly a problem in the transmission and/or receipt of the IDCTP assignment logs because BPH fax verifications prove the date on which BPH sent assignment logs to DARS, but it nonetheless took additional days before DARS received the logs. It is unclear whether this is due to a malfunction in equipment or human error. The CC II who faxes the daily list reported she collects all lists generated at the jail at the close of business every day and then faxes a comprehensive assignment list to DARS the following business day. She did acknowledge that

there were some delays around the holidays in 2008 due to pre-scheduled vacation time when she was out of the office.

In order to remedy the delays in notifying DARS of ICDTP assignments, a report has been added to RSTS that can be run throughout the day and shows all parolees who have accepted ICDTP at their hearings. Once the DC enters ICDTP into RSTS as the disposition, the parolee's information will instantly transmit into the ICDTP report. DARS has been given RSTS access and can run the report throughout the day, as needed. The Glendale DRU will continue to fax their daily assignment lists and DARS staff will utilize the lists and RSTS reports to ensure all assignments are received. If it proves that the RSTS lists accurately report all ICDTP assignments, the BPH will eventually phase out their hand-generated lists and DARS will rely on the RSTS report. DARS is currently testing the accuracy of the RSTS report as compared to the hand-generated lists.

#### ***Remedial sanction placements***

RSTS indicates that ICDTP continues to be the most frequently used remedial sanction at LACJ. The "Closed Case Summary- Remedial Sanctions" report shows remedial sanction placements ordered by the BPH at the RTCA, PCH, OWR, or Revocation Hearing stages as follows (**Exhibit 15**):

- In January 2009, two parolees were sent to the Female Residential Multi-Service Center (FRMSC), 229 were sent to a community based ICDTP, four were sent to a jail based ICDTP, 260 were given Proposition 36, 16 were sent to a Parolee Service Center (PSC), six were sent to a Residential Multi-Service Center (RMSC), and one was sent to another program.
- In February 2009, 106 parolees were sent to a community based ICDTP, two were sent to a jail based ICDTP, 202 were given Proposition 36, 28 were sent to a PSC, 15 were sent to a RMSC, and three were sent to a SASCA or another program.

#### **❖ CORRECTIVE ACTION PROPOSED:**

- A system must be put into place in order to timely send notification of ICDTP assignments from BPH to DARS- it is anticipated that the addition of a RSTS ICDTP report will resolve this issue. The OCC will track the accuracy of the report to determine whether it is a viable and permanent solution.

## **12. Mentally Ill Parolees**

#### ***Failure to provide parolee medications for mental illnesses***

Four of the 10 parolees whose proceedings were observed reported they have a mental illness that requires medication. Only one parolee has received the required medication since arriving at the jail (Moore- F27060).

- Perkins (T28890)- DEC indicates the parolee is CCCMS without indication that he has since been declassified. The parolee informed the DC at his PCH that he has not received his required medication since his arrest. The parolee also reported that he is not housed correctly at the jail given his mental health status- he is housed in the general population.

- Lonchon (F65951)- The parolee informed the DC at his PCH that he has not received required psychotropic medication at LACJ. The parolee stated the lack of medication gave him significant trouble during the first few days in custody but that he feels “ok” now. The DC did a good job exploring the parolee’s current mental status in order to determine whether the parolee was able to participate in the proceeding. The BPH 1073 indicates the parolee did not require accommodation for the parole proceedings and the parolee verified he had untruthfully informed the notice agent he did not have any disabilities when he was served notice.
- Moore (F27060)- The main DEC screen indicates the parolee is “mentally ill” but the BPH 1073 does not include this information. The parolee informed the DC at his PCH that he is bipolar and just received his medication the day before the PCH. It appeared that the parolee had not yet stabilized on his medication but that he was able to understand the charges, what was occurring during the hearing, and was able to provide counsel his input.
- Vreeland (P46705)- The parolee verified his CCCMS status to the DC at his PCH. He reported he has been at LACJ for approximately two weeks and has not seen a doctor or been provided his prescribed medications. The DC conducted a review to determine whether the parolee was able to participate in the proceeding and the parolee reported he could understand without his medications and was prepared to proceed.

One DC reported that a majority of parolees in need of psychotropic drugs have not received them by the time they appear before the BPH for a probable cause hearing. However, he also stated that all of the parolees he saw on the day he was interviewed reported receiving their medications at the jail.

***Cases suspended due to mental health issues (GAP parolees)***

It appears that the interim process for suspending and tracking cases in which the parolee appears unable to meaningfully participate in the revocation process due to mental illness is working as intended. CalPAP produces logs on a regular basis that show all parolees tracked under the interim process and includes notes concerning their mental health status. Once a parolee is able to resume the revocation process, DRU staff is notified and placed on the next available calendar (which requires that hearings for this population be scheduled every two weeks). CalPAP attorneys are conducting regular status checks to determine their client’s status and the hearings are occurring once the parolee has stabilized and can participate.

There are currently only two parolees out of the Los Angeles CalPAP on the GAP log. **(Exhibit 16).**

- Parolee Johnson’s (T53293) proceeding was suspended on 12/15/08. He was pending a competency hearing before the Los Angeles Superior Court on 3/23/09 and CalPAP is still awaiting the outcome of that hearing. Defense counsel has made regular status checks on the parolee.
- Parolee Manning (T66172) refused to attend his PCH on 10/30/08 and his proceedings were subsequently suspended. BPH attempted to place the parolee on the hearing calendar in early March but he was again unable to participate. As of 3/11/09 CalPAP reported the parolee was able to resume the revocation process. He attended his

revocation hearing on 3/30/09, was able to participate, and was assessed an 11E return to custody on the charges of absconding and auto burglary.

### **13. Staffing Levels**

**DAPO** - Currently two Supervising Notice Agents are assigned to supervise 28 FUNA/DRUNA positions at LACJ and Pitchess Detention Center. The SNA reported the following notice agent vacancies and impending vacancies: one notice agent is out on extended medical leave, two have recently received promotions and one is set to retire at the end of March 2009. It was reported that staffing shortages have been manageable but with the impending promotions and retirement the losses may adversely impact their ability to meet the *Valdivia* timeframes. The SNA also reported that vacation scheduling also exacerbates the staffing problems because they do not have vacation relief notice agents assigned. Additionally, the SNA reported she had been informed the ETO process had been frozen since February and is unsure when she will be able to fill any vacant positions.

**BPH:** The DRU still has a significant number of vacancies. The ACDC confirmed that interviews were held for Office Technician and Office Services Manager I positions and that a new Office Services Manager and two Office Technicians were hired. However, one Office Services Manager I and one Office Technician will be leaving soon to pursue other employment opportunities and therefore additional vacancies will soon exist. It remains extremely difficult to recruit and retain staff in several of the DRU positions due to lower pay associated with certain classifications, lengthy commute times, and promotional opportunities.